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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,218	08/03/2001	Barbara Horsey O'Connor	7010-0018	7233

7590 05/01/2003  
ROBINS & PASTERNAK LLP  
Suite 200  
90 Middlefield Road  
Menlo Park, CA 94025

EXAMINER

BENNETT, RACHEL M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/01/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/922,218	Applicant(s) O'CONNOR ET AL.	
	Examiner Rachel M. Bennett	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-80 is/are pending in the application.
- 4a) Of the above claim(s) 39-63 and 72-80 is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group IV, claims 64-71 in Paper No. 8 is acknowledged.

### *Specification*

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 64-71 rejected under 35 U.S.C. 103(a) as being unpatentable over De Ponti et al. (GB 2245831).

Applicants claims a method for making a powdered pharmaceutical composition, said method comprising: (a) providing a mixture of pre-formed hydrogel particles, (b) contacting the hydrogel particles with an aqueous composition containing a pharmacologically active agent for a period sufficient to allow the agent to associate with the hydrogel particles and be incorporated therewith; (c) separating the hydrogel particles from the aqueous composition... (d) contacting the primary loaded hydrogel particle with aqueous composition comprising said pharmaceutically active agent... (e) separating the hydrogel formed in step (d) from the aqueous composition in at least a partial drying step and (f) drying the secondary hydrogel particles to obtain a powdered pharmaceutical composition.

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De Ponti discloses formulation for treating burns or wounds comprising a powder of water-soluble and water-swellaable polysaccharide microspheres loaded with a heparin-binding growth factor. The polysaccharides include cellulose, starches, dextrans, collagen, gelatin or albumin. See abstract. The powder comprises water-soluble and water-swellaable microspheres loaded with a heprin-binidng growth factor. The powder has gel-forming capability. It is typically a lyophilized powder. The microspheres are typically biodegradable. See pages 2-3. The microspheres are loaded with an amount of growth factor effective for use in treating a wound or burn. The amount may therefore be tailored to requirements. Typically, however, the microspheres are loaded with from 0.2 to 5.0 mg of growth factor per gram of microspheres. See page 5. The powder is prepared by a process which comprises: (i) soaking water-insoluble and water-swellaable polysaccaride microspheres in an aqueous solution of a heparin-binding growth factor; and (ii) lyophilizing the dispersion of the microspheres in the aqueous growth factor solution. The growth factor is loaded into the microspheres by first soaking a weighed amount of microspheres in a solution of the growth factor in water. The ratio of microspheres: growth factor in solution and microspheres: solution of growth factor may vary greatly. See pages 6-7. During the soaking the microspheres reach a certain degree of swelling depending from their chemical composition, unswollen diameter, the nature of their cross-linking agent and its relative content with reference to the microspheres, temperature, pH, ionic strength, nature of the solution and presence of surface modifiers on the microspheres. The microspheres are soaked for sufficient time so that the growth factor is absorbed onto and/or into the microspheres. The time needed for soaking (incubation) can vary greatly. The time may be from 2 mins to 48 hours, preferably from 2 mins to 2 hours, at room temperature. Following the soaking step,

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freeze-drying is carried out to eliminate water. The type of freeze-drying is carried out to eliminate water. The type of freeze-drying process can vary greatly. Suitable results are obtained with anything from very simple equipment, to sophisticated freeze-driers where it is possible to control various temperatures (shelves, product, condenser), the vacuum and times. See page 8 and claims 7-9. De Ponti does not explicitly state contacting the primary loaded hydrogel particles with an aqueous composition to allow further agent to associate with the hydrogel.

Absent unexpected results, it is the position of the examiner it would have been obvious to one of ordinary skill in the art at time the invention was made to have modified the composition of De Ponti by contact the primary loaded hydrogel particles with an aqueous composition to allow further agent to associate with the hydrogel because of the expectation of obtaining the desired swelling and amount of growth factor absorbed onto and /or into the microsphere as taught by De Ponti. Both the reference and the instant application desire a powdered pharmaceutical by mixing pre-formed hydrogel particles with a pharmaceutically active agent for a period of time sufficient to allow the agent to associate with the hydrogel particles. Therefore, it would have been within the skill of the art to determine the soaking time as well as the number of times to soak the hydrogel particle in order to obtain the desired amount of agent on and/or in the hydrogel particles. One of ordinary skill in the art would achieve the desired degree of drug loading by considering such factors as the ionic strength of the aqueous solution, the temperature and drug solubility.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

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*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779.

The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

R. Bennett  
April 25, 2003

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600